

The Senate Regulated Industries and Utilities Committee offered the following substitute to SB 460:

A BILL TO BE ENTITLED
AN ACT

To enact the "Georgia Public Works and Contractor Protection Act"; to amend Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to security and immigration compliance, so as to define a certain term; to clarify certain provisions and requirements relating to public employers' verification of employee work eligibility; to require compliance by public entities and contractors and subcontractors; to provide for criminal and civil sanctions and penalties; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia Public Works and Contractor Protection Act."

SECTION 2.

Article 3 of Chapter 10 of Title 13 of the Official Code of Georgia Annotated, relating to security and immigration compliance, is amended by revising Code Section 13-10-90, relating to definitions, as follows:

"13-10-90.

As used in this article, the term:

(1) 'Commissioner' means the Commissioner of the Georgia Department of Labor.

(2) 'Federal work authorization program' means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify employment eligibility information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), ~~D.L.~~ Pub. L. 99-603.

(3) 'Physical performance of services' means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property including the construction, reconstruction, or maintenance of all or part of a public road.

(4) 'Public employer' means every department, agency, or instrumentality of the state or a political subdivision of the state.

~~(4)~~(5) 'Subcontractor' includes a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier."

SECTION 3.

Said article is further amended by revising subsection (b) of Code Section 13-10-91, relating to the verification of new employee eligibility, applicability, and rules and regulations, as follows:

"(b)(1) No public employer shall enter into a contract pursuant to this chapter for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify employment eligibility information of all newly hired employees ~~or subcontractors~~. Before a bid for any such service is considered by a public employer, the bid shall include a signed, notarized affidavit from the contractor attesting to the following:

(A) The affiant has registered with, ~~and~~ is authorized to use, and uses the federal work authorization program and has been continuously using the federal work authorization program for the previous six months;

(B) The user identification number and date of authorization for the affiant; and

(C) The affiant is using and will continue to use the federal work authorization program throughout the contract period and will only contract with subcontractors who present an affidavit attesting to continuous use of the federal employment verification system for the previous six months with the date of authorization and the user number.

An affidavit required by this subsection shall be considered an open public record once a public employer has entered into a contract for physical performance of services; provided, however, that any information protected from public disclosure by federal law shall be redacted. Public employers shall maintain affidavits for five years.

(2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this subsection shall be guilty of violating Code Section 16-10-20, relating to falsifying a government document, and, upon conviction shall be punished as prescribed by that Code section.

59 (3) Except as otherwise provided in paragraph (2) of this subsection, any person who
60 with criminal negligence violates any provision of this subsection shall upon conviction
61 be guilty of a misdemeanor.

62 (4) Any subcontractor that subcontracts for goods and services with a subcontractor not
63 in privity with the contractor shall provide the required affidavit to the contractor and to
64 the public employer in the manner and time period required in this subsection.

65 ~~(2)~~(5) No contractor or subcontractor who enters a contract pursuant to this chapter with
66 a public employer shall enter into such a contract or subcontract in connection with the
67 physical performance of services and contracts for road construction under Chapter 4 of
68 Title 32 within this state unless the contractor or subcontractor registers and participates
69 in the federal work authorization program to verify employment eligibility information
70 of all newly hired employees. Any employee, contractor, or subcontractor of such
71 contractor or subcontractor shall also be required to satisfy the requirements of this
72 paragraph.

73 (6) A contractor or any subcontractor shall, as a condition of any contract entered into
74 pursuant to this chapter, provide a public employer with the identity of any and all
75 subcontractors hired or contracted with for purposes of fulfilling the obligations under
76 such public service contract. The notice required by this paragraph shall be provided
77 within five business days of entering into a contract or agreement for hire with any
78 subcontractor. The notice shall include the subcontractor's name, address, user
79 identification number, and date of authorization to use the federal work authorization
80 program. The information required by this paragraph shall be submitted in the form of
81 a signed, notarized affidavit.

82 (7)(A) Each public employer shall submit a compliance report to the state auditor
83 annually certifying compliance with the provision of this subsection. Such compliance
84 report shall be submitted not later than July 1 of each year and shall contain the public
85 employer's federal employment verification user number and date of authorization and
86 the legal name, address, and E-Verify user number of or proof of participation in any
87 subsequent similar federal employment verification system by the contractor and each
88 subcontractor and the date of the contract between the contractor and public employer
89 and between the contractor and each subcontractor. Each report submitted to the state
90 auditor by a public employer shall have attached thereto the sworn affidavit required
91 by paragraph (1) of this subsection. The state auditor shall conduct annual compliance
92 audits on a minimum of at least half of the reporting agencies and publish the results
93 of such audits annually on or before September 30.

94 (B) In order to verify compliance with the provisions of this subsection, each year the
95 Commissioner shall conduct at least 100 random audits of contractors or may conduct

such an audit upon probable cause to suspect a violation of this subsection. The Commissioner shall upon finding probable cause to suspect any violation of this subsection report his or her findings to the appropriate law enforcement authorities.

(C)(i) If the state auditor finds any public employer which is a political subdivision or instrumentality of the state to be in violation of this subsection, such public employer shall be excluded from the list of qualified local governments under Chapter 8 of Title 50 until such time as the public employer demonstrates to the commissioner of community affairs that the public employer has corrected all deficiencies and is in compliance with this subsection. A new compliance report submitted to the state auditor shall be deemed satisfactory and correcting the prior deficient compliance report so long as the new report fully complies with this subsection.

(ii) If the state auditor finds any public employer which is a state department or agency to be in violation of the provisions of this subsection twice in a five-year period, the funds appropriated to such state department or agency for the fiscal year following the year in which the agency was found to be in violation for the second time shall be not greater than 90 percent of the amount so appropriated in the second year of such noncompliance. Any public employer found to be in violation shall be listed on www.Open.Georgia.gov or another official state website with an indication and explanation of each violation.

(8) Any contractor or subcontractor convicted under paragraph (2) or (3) of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following the date of the conviction. No public employee shall be liable for negligently accepting a bid from or contracting with a contractor or subcontractor convicted under paragraph (2) or (3) of this subsection. Any contractor or subcontractor found to be in violation shall be listed on www.Open.Georgia.gov or another official state website with an indication and explanation of each violation.

(9) Any contractor or subcontractor which fails to comply with this subsection shall be subject to administrative fines or other disciplinary action by the appropriate licensing authority if licensed:

(A) To practice electrical contracting, plumbing contracting, low-voltage contracting, utility contracting, or conditioned air contracting under Chapter 14 of Title 43; or

(B) As a residential or general contractor under Chapter 41 of Title 43.

Procedure and sanctions in such disciplinary matters shall be as provided in Code Sections 43-14-5 and 43-41-16."

SECTION 4.

This Act shall become effective December 31, 2010.

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SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.